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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 458 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? Yes.

JJJ

J

3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

No

5. Whether it is to be circulated to the Civil Judge?

No

GUJARAT INSECTICIDES LTD

Versus

JA MAKWANA ASSTT. SENIOR TECHNICIAN (MAINTENANCE)

Appearance:

M/S TRIVEDI & GUPTA for Petitioners

MR MS MANSURI for Respondent No. 1

Respondent no.2 served.

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 29/06/98

ORAL JUDGEMENT

Rule. Mr.M.S.Mansuri learned advocate for respondent no.1 waives service of Rule on behalf respondent no.1.

2. Gujarat Insecticides Ltd. has filed the present petition to challenge the order passed by the Member of Industrial, Baroda on 13.1.1998 in Complaint Application No. 75/97 in Refs.(IT) Nos 87/93 and 131 of 1992.

3. The respondent no.1 J.A.Makwana is a workman of the present petitioner and he is also the General Secretary of GTL Employees Union i.e. the union of the workmen of the present petitioner. The petitioner has initiated departmental proceedings against the respondent no.1 for his alleged misconduct committed by him on 20.7.1997 at 10.00 a.m.. After initiating the said departmental inquiry a suspension order is also passed on 5.8.97. The respondent made a complaint before the Industrial Tribunal, Baroda before whom Refs.(IT) Nos 87/93 and (IT) No.131 of 1992 are pending on account of collective disputes raised by the workmen. A dispute was raised by the present respondent regarding the appointment of inquiry officer in the inquiry proceedings initiated against him and in the said reference, he had also prayed for the stay of the departmental inquiry proceedings till the decision of the said reference. In this complaint (IT) No.75 of 1997, the respondent raised a contention that on account of the suspension order present petitioner is preventing him from attending the office which is situated within the administrative building of the petitioner company and thereby prevented him from functioning as office bearer of the workers' union. The union is also a recognised union. The claim of the respondent was resisted by the petitioner before the Industrial Tribunal on two grounds (1) that there is no office of the union within the premises of the company and (2) that in view of the suspension of the present respondent as per the Standing Orders, he is not to enter the company premises and there is no breach of any service conditions of the present respondent and therefore, said complaint could not be entertained by the Industrial Tribunal.

4. After considering the material produced before the Industrial Tribunal, the Tribunal negatived the contention of the present petitioner that there is no office of the trade union within the company premises. The Tribunal also negatived the contention that there is no breach of service conditions of the present petitioner on account of preventing him from attending the union

office.

5. The Industrial Tribunal has considered various documents produced before it and has recorded a finding of fact that there is an office of the trade union within the company premises and prima-facie I am unable to hold that said finding recorded by the Industrial Tribunal is erroneous so as to interfere with the same by exercising powers of Articles 226/227 of the Constitution of India.

6. The next question to be considered in this matter is, as to whether the dispute which is raised by the workmen could be said to be falling within section 33, 33-A of the Industrial Disputes Act. For the purpose of considering this question, it is necessary to consider particularly the provisions of sub-section 3 of section 33 of the Industrial Disputes Act. Said provisions are running as under:

"(3) Notwithstanding anything contained in sub-section (2), no employer shall during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute.-

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman,

save with the express permission in writing of the authority before which the proceeding is pending."

Explanation.- For the purpose of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being {a member of the executive or other office-bearer} of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

There is no dispute of the fact that present respondent is an office bearer of the recognised union of the workmen. Consequently, the respondent is a protected workman. If provisions of sub-section 3(d) of section 33

of the I.D.Act are considered then it would be quite clear that if any action taken by the employer against any protected workman by altering the service conditions to the prejudice of such protected workman, then it will be hit by sub-section 3A of section 33 of the I.D.Act. Admittedly, when the respondent is an office bearer of the union, as an office bearer, he is entitled to attend the office and to perform his duties as an office bearer of the union. When the respondent is admittedly a protected workman, this activity of him in attending the office of the trade union and to look after the work of trade union will also automatically become condition of service applicable to a protected workman. Therefore, if on account of suspension order, the employer wants to prevent a protected workman from attending the office of the union situated within the company premises then that action will definitely be an action prejudicial to the conditions of the protected workman. Therefore, in the circumstances, the order passed by the Industrial Tribunal restraining the present petitioner from obstructing the respondent from going and coming back from the office premises of the factory could not be said to be beyond the provisions of sections 33 and 33A of the I.D.Act.

7. Learned advocate for the petitioner also urged before me that the Industrial Tribunal has passed an order granting interim relief in favour of the respondent and he contended before me that the Industrial Tribunal is not entitled to grant such an interim relief. But if the facts and circumstances require, the Industrial Tribunal to do anything which is just and proper for the purpose of achieving the ends of justice, then the Industrial Tribunal is entitled to do so under the inherent powers and in the circumstances I do not think it proper to interfere with the said order by exercising powers under Articles 226/227 of the Constitution of India. Therefore, in the circumstances the petition deserves to be rejected and I reject this petition accordingly.

8. Now the order of suspension is passed on 5.8.97. The Industrial Tribunal has stayed further proceedings of the inquiry. I hope that the Industrial Tribunal will pay proper attention to see that the departmental proceedings are not throttled by its action. It should take its decision on the said matter in which the inquiry proceedings are stayed by it and pass appropriate orders as early as possible so that the departmental inquiry can proceed further if it is to proceed further. The learned

advocate for the petitioner requested me to continue the operation of the stay order granted by the Industrial Tribunal for some time. But in the circumstances, I hold that this is not a fit case to continue the stay and allow the petitioner to continue the illegality. I therefore, reject the said prayer. Rule is made absolute. No costs.

(S.D.Pandit.J)